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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 JULIO ANTELO,

9 Plaintiff,

10 vs.

11 DEPUY SYNTHES PRODUCTS, LLC;
12 DEPUY SYNTHES SALES, INC.,

13 Defendants.

Case No. 2:13-cv-01613-MMD-GWF

**AMENDED REPORT AND
RECOMMENDATION**

14 This matter is before the Court with respect to the continued prosecution of the above
15 entitled action.

16 Following the withdrawal of Plaintiff's counsel in 2014, the Court was advised by Plaintiff's
17 daughter, Virginia Guthrie, that due to age and ill health, Plaintiff Julio Antelo was unable to
18 prosecute the case on his own behalf and needed the assistance of his daughter in efforts to retain
19 new counsel and secure the assistance of an expert witness. The Court accorded Plaintiff, through
20 his daughter, substantial time to obtain the expert's report in support of Plaintiff's claim and to
21 retain new counsel. During the status hearing on September 22, 2015, Ms. Guthrie advised the
22 Court that on behalf of Plaintiff, she has been unable to find an attorney willing to take the case and
23 that she does not believe she will be able to retain counsel to represent the Plaintiff in this case. Ms.
24 Guthrie stated, however, that Plaintiff was unwilling to voluntarily dismiss the case.

25 On November 16, 2015, the Court set a new deadline for filing dispositive motions and on
26 December 16, 2015, Defendants filed a motion for summary judgment. On December 16, 2015, Ms.
27 Guthrie filed a status report on behalf of her father stating:

28 . . .

1 As Mr. Antelo cannot represent himself in court, and I do not have the
2 authority, nor has an attorney been retained, Plaintiff cannot proceed.
3 It is Plaintiff's expectation that the judge would file an order to
Dismiss this case "without prejudice" as mentioned in a recent
hearing.

4 *Status Report (#70).*


5 Based on the foregoing,

6 **IT IS HEREBY RECOMMENDED** that this case be dismissed without prejudice.

7 **NOTICE**

8 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
9 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
10 held that the courts of appeal may determine that an appeal has been waived due to the failure to file
11 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has
12 also held that (1) failure to file objections within the specified time and (2) failure to properly
13 address and brief the objectionable issues waives the right to appeal the District Court's order and/or
14 appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157
15 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

16 DATED this 23rd day of December, 2015.

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19 GEORGE FOLEY, JR.
United States Magistrate Judge